UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: ARMAND OSMANOVIC, Debtor.	Case No.: 17-11034-CMG Chapter 13 Honorable Christine M. Gravelle, U.S.B.J. **Hearing Date: March 1, 2017 at 9:00 a.m.**

DEBTOR'S MEMORANDUM OF LAW IN OPPOSITION TO ALLSTATE'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

James G. Aaron, Esq.
ANSELL GRIMM & AARON, P.C.
1500 Lawrence Avenue
CN 7807
Ocean, New Jersey 07712
Tel: (732) 922-1000
e-mail: jga@ansellgrimm.com
Attorneys for the Debtor

ARGUMENT

THERE IS NO CAUSE FOR GRANTING STAY RELIEF TO ALLSTATE

"The scope of the automatic stay is broad." Mar. Elec. Co. v. United Jersey Bank, 959 F.2d 1194, 1203 (3d Cir. 1991), reh'g granted and opinion vacated (Jan. 10, 1992), opinion reinstated on reh'g (Mar. 24, 1992). The automatic stay serves a number of purposes. The stay "gives a bankrupt a breathing spell from creditors by stopping all collection efforts, all harassment, and all foreclosure actions." Mar. Elec. Co. v. United Jersey Bank, 959 F.2d at 1204. The stay also allows the debtor "to be relieved of the financial pressures that drove him into bankruptcy." Id. "Consolidating all pre-petition claims against the debtor in one collective proceeding before a bankruptcy court is the essence of bankruptcy." Mar. Elec. Co. v. United Jersey Bank, 959 F.2d 1194, 1207 (3d Cir. 1991), reh'g granted and opinion vacated (Jan. 10, 1992), opinion reinstated on reh'g (Mar. 24, 1992).

Section 362(d) of the Bankruptcy Code (the "Code") governs relief from the provisions of the automatic stay. Upon the request a party in interest and "after notice and a hearing, the court shall grant relief from the [automatic] stay . . . such as terminating, annulling, modifying, or conditioning such stay (1) for cause, ..." 11 U.S.C. § 362(d)(1). "Section 362(d)(1) does not define 'cause,' leaving courts to consider what constitutes cause based on the totality of the circumstances in each particular case." Baldino v. Wilson (In re Wilson), 116 F.3d 87, 90 (3d Cir. 1997).

In addition to cases where stay relief has been granted due to a lack of adequate protection, stay "relief may also be granted when necessary to permit litigation to be *concluded* in another forum, particularly if the nonbankruptcy suit involves multiple parties or **is ready for trial**." In re Telegroup, Inc., 237 B.R. 87, 91 (Bankr. D.N.J. 1999) (internal quotation marks omitted and emphasis added); see also In re Patriot Constr. Corp., Case No. 05-33190 (DHS), 2006 Bankr.

LEXIS 4133, at *6 (Bankr. D.N.J. May 31, 2006); accord In re Telegroup, Inc., 237 B.R. 87, 91 (Bankr. D.N.J. 1999); Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc., 304 B.R. at 130;

"In addition, other courts have found that actions which are only remotely related to the bankruptcy case, or which involve the rights of third parties often will be permitted to proceed in another forum." Id. at 91. However, according to Congress, even a creditor seeking stay relief to complete pre-petition litigation is not necessarily entitled to stay relief:

> Other causes might include the lack of any connection with or interference with the pending bankruptcy case. For example, a divorce or child custody proceeding involving the debtor may bear no relation to the bankruptcy case. In that case, it should not be stayed. A probate proceeding in which the debtor is the executor or administrator of another's estate usually will not be related to the bankruptcy case, and should not be stayed. Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is debtor protection from his creditors. The facts of each request will determine whether relief is appropriate under the circumstances.

Id. at 343–44; see S. Rep. No. 989, 95th Cong., 2d Sess. 52 (1978), U.S. Code Cong. & Admin. News 1978, p. 6300.

"When a petition in bankruptcy is filed, the commencement or continuation of all judicial proceedings is automatically stayed. This stay is intended to protect the debtor from its creditors and to permit time to formulate a workable plan of reorganization and payment." In re Zenith Labs., Inc., 104 B.R. 659, 661 (D.N.J. 1989) (emphasis added).

The Third Circuit has determined that insurance policies fit within section 541's definition of property of the bankruptcy estate. First Fidelity Bank v. McAteer, 985 F.2d 114, 116 (3d Cir. 1993); see also In re Estate of Lellock, 811 F.2d 186, 189 (3d Cir. 1987).

Here, there is no cause for granting stay relief. The insurance policy at issue is property of the bankruptcy estate. Thus, the state court litigation that Allstate is seeking authorization to continue affects estate property. The Superior Court action is not ready for trial so the interests of judicial economy and efficiency do not weigh in favor of granting stay relief to Allstate. Furthermore, the Debtor would be highly prejudiced as it would be forced to incur substantial legal fees and costs defending Allstate's lawsuit in the Superior Court. Such legal fees and costs will seriously inhibit the Debtor's ability to fund a plan and successfully reorganize in this Chapter 13 case.

Furthermore, the issues that the Debtor faces which caused the filing of the petition stems from claims brought by plaintiff Matthew Boyer for injuries allegedly sustained by Boyer as a result of an altercation with the Debtor. In the state court proceeding, which is presently stayed, the plaintiff alleges significant injuries and it is entirely possible, yet unknown to the Debtor, whether or not the plaintiff will seek a nondischargeability claim against the Debtor. The insurance company has, of course, brought a declaratory judgment action to declare that the Debtor has no insurance coverage. This coverage issue is of great import to the Debtor as the Debtor's plan will be significantly affected by the determination of the insurance coverage issue, as well as the nondischargeability issue, if it is raised. As a result, it is requested that the stay be continued until at least a period of time when the Debtor will know whether or not a nondischargeability complaint has been brought, the deadline for which is May 1, 2017, as fixed by the Court. The request by Allstate affects the rights of the Plaintiff in the state court action as to certain collectability, as well as the Debtor.

Accordingly, Allstate's motion for stay relief must be denied.

CONCLUSION

For the foregoing reasons, the Debtor respectfully requests that the Court deny Allstate's Motion for Relief from the Automatic Stay.

ANSELL GRIMM & AARON, P.C.
Attorneys for the Debtor

By: /s/ *James G. Aaron*____________________
JAMES G. AARON

DATED: February 23, 2017